

Title 15—Elected Officials
Division 40—State Auditor
Chapter 3—Rules Applying to Political Subdivisions

ORDER OF RULEMAKING

By the authority vested in the State Auditor under Section 29.100, RSMo 2000, and Sections 479.359 and 479.362, RSMo Supp. 2015, the auditor adopts a rule as follows:

15 CSR 40-3.170 is adopted

A notice of proposed rulemaking was published in the *Missouri Register* on October 1, 2015 (40 Mo. Reg. 1307 -1310). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held November 2, 2015, and the public comment period ended November 6, 2015. At the public hearing, the State Auditor’s Office staff explained the rule and two individuals commented. In addition, the State Auditor received written comments from 17 individuals.

COMMENT #1: Edward Pultz, municipal judge for the cities of Farmington and Iron Mountain Lake, and the city counselor for the City of Park Hills; Dana Collins-Messex, St. Clair Municipal Court Clerk; Deana Teague, Poplar Bluff Municipal Court Administrator; Martha Henderson, New Madrid Municipal Court Clerk; Diane Leftridge, Bonne Terre Municipal Court Clerk; Jamie Neal, Independence Municipal Court Clerk; Carl Lumley, attorney with Curtis, Heinz, Garrett, and O’Keefe, P.C.; Melissa Ziemianin, court administrator and city clerk of the City of Pineville; Keith Cheung, attorney with Curtis, Heinz, Garrett, and O’Keefe, P.C.; and Michelle Pegram, Lake Lotawana Municipal Court Administrator, requested that the Auditor’s Office provide information regarding the application of the definition of “minor traffic violations” to particular violations, particularly non-moving violations.

RESPONSE AND EXPLANATION OF THE CHANGE: The statutory definition of “minor traffic violation” includes municipal or county ordinance traffic violations, except those that involve any one of the following: 1) an accident; 2) an injury; 3) the operation of a commercial motor vehicle; 4) authorization for the Department of Revenue to assess five or more points to a person’s driving record upon conviction; 5) exceeding the speed limit by more than 19 miles per hour; or 6) violations within a construction zone or school zone. Subsection (7)(A) will be added to provide examples to assist in reporting the information specified by Section 479.359, RSMo.

COMMENT #2: Deana Teague, Poplar Bluff Municipal Court Administrator; Pat Cox Sikeston Municipal Court Administrator; E. Irene Morse, Poplar Bluff Municipal Court Deputy Clerk; Amy Perrin, Rock Hill Missouri Municipal Court Clerk; Dana Loudenbaugh, Fair Grove City Clerk; Darra Justice, Fair Grove Court Clerk; Sylvia Deering, Court Clerk for the Pineville Municipal Court; Keith Cheung, attorney with Curtis, Heinz, Garrett, and O’Keefe, P.C.; and Michelle Shaffer, Raymore Municipal Court Clerk, requested a list of charges included in the “minor traffic violation” definition.

RESPONSE AND EXPLANATION OF THE CHANGE: Because of differences between municipalities, an all-inclusive list cannot be provided. Subsection (7)(A) will be added to provide examples to assist in reporting the information specified by Section 479.359, RSMo.

COMMENT #3: Deana Teague, Poplar Bluff Municipal Court Administrator; Melissa Ziemianin, court administrator and city clerk of the City of Pineville; Sylvia Deering, Court Clerk for the Pineville Municipal Court; and Jamie Neal Independence Municipal Court Clerk requested that the Auditor's office provide information regarding the reporting of violations when the violation has been amended from the original violation.

RESPONSE AND EXPLANATION OF THE CHANGE: Subsections (7)(B) and (7)(C) will be added to provide examples to assist in reporting the information specified by Section 479.359, RSMo.

COMMENT #4: Edward Pultz, municipal judge for the cities of Farmington and Iron Mountain Lake, and the city counselor for the City of Park Hills, requested clarification for when the addendum should first be filed.

RESPONSE AND EXPLANATION OF THE CHANGE: Under Section 479.359.3, RSMo, the addendum is required to be filed with the annual financial report submitted under Section 105.145. Subsection (3) will be amended to specify that these forms shall be filed together as provided by statute.

COMMENT #5: Edward Pultz, municipal judge for the cities of Farmington and Iron Mountain Lake, and the city counselor for the City of Park Hills; and Carl Lumley, attorney with Curtis, Heinz, Garrett, and O’Keefe, P.C., requested that the addendum allow local governments whose total municipal court revenues are below the required excess revenue percentages for minor traffic violations to file an alternative percent calculation.

RESPONSE AND EXPLANATION OF CHANGE: Section 479.359.1, RSMo, specifies, “Every county, city, town, and village shall annually calculate the percentage of its annual general operating revenue received from fines, bond forfeitures, and court costs

for minor traffic violations, including amended charges for any minor traffic violations, whether the violation was prosecuted in municipal court, associate circuit court, or circuit court, occurring within the county, city, town, or village.” Subsection (6) will be amended to allow for reasonable opportunity for demonstration of compliance by counties, cities, towns, and villages whose fiscal years ended before August 28, 2015, but whose financial reports are filed after August 28, 2015.

COMMENT #6: Paul V. Rost, attorney with Cunningham, Vogel, and Rost, P.C., suggested that the Auditor's office include an additional subsection stating that any city, town, or village that has its municipal violations heard by a county municipal court or by an associate circuit court judge and that does not receive any proceeds from the municipal court shall not have to supply the financial information required by the proposed rule and form. He also suggested that the Auditor's Office amend the included form.

RESPONSE: Section 479.359, RSMo, does not provide any exceptions. The included form allows a county, city, town, or village to check boxes to confirm that they have no municipal court and receive no revenue from municipal violations. The words “its own” denote that the county, city, town, or village are not contracting with or using a court of another government entity. No changes will be made as a result of this comment.

COMMENT #7: Dana Loudenbaugh, Fair Grove City Clerk; and Darra Justice, Fair Grove Court Clerk, disagreed with the estimation of the public cost.

RESPONSE: The public cost statement examines the cost attributable to the proposed rule, not whether the changes in the law itself result in any cost. No changes have been made as a result of this comment.

COMMENT #8: Dana Loudenbaugh, Fair Grove City Clerk; and Darra Justice, Fair Grove Court Clerk, commented on the fact that the addendum must be signed in front of a notary public.

RESPONSE: Section 479.359, RSMo, requires notarization. No changes will be made as a result of this comment.

COMMENT # 9: Carl Lumley, attorney with Curtis, Heinz, Garrett, and O’Keefe, P.C., requested that the Auditor’s Office clarify the definition of “minor traffic violations” as to whether the exceptions in the statutory definition refer to the underlying facts or an element of the formal charge.

RESPONSE: The term “minor traffic violation” is specifically defined in Section 479.350, RSMo. The statutory definition of “minor traffic violation” includes municipal or county ordinance traffic violations, except those that involve any one of the following: 1) an accident; 2) an injury; 3) the operation of a commercial motor vehicle; 4)

authorization for the Department of Revenue to assess five or more points to a person's driving record upon conviction; 5) exceeding the speed limit by more than 19 miles per hour; or 6) violations within a construction zone or school zone. No changes will be made as a result of this comment.

COMMENT #10: Carl Lumley, attorney with Curtis, Heinz, Garrett, and O'Keefe, P.C., suggested that the term "total annual revenue" should be deleted from the form as it is inapplicable to the addendum.

RESPONSE: The total revenue for the county, city, town, or village will assist in the auditing of the calculations. No changes will be made as a result of this comment.

COMMENT # 11: Carl Lumley, attorney with Curtis, Heinz, Garrett, and O'Keefe, P.C., requested that the Auditor's office include a comprehensive list of items included in the terms "annual general operating revenue" and "court costs" to promote uniform compliance.

RESPONSE: Because of differences between municipalities, an all-inclusive list cannot be provided. The terms are defined in Section 479.350, RSMo. No changes will be made as a result of this comment.

COMMENT #12: Paul V. Rost, attorney with Cunningham, Vogel, and Rost, P.C., suggested that the Auditor clarify this sentence on the form, "List Any Courts Which Provide Revenue from Fines, Bond Forfeitures and Court Costs for Minor Traffic Violations."

RESPONSE AND EXPLANATION OF CHANGE: The form has been changed for clarity in response to this comment.

COMMENT #13: Melissa Ziemianin, court administrator and city clerk of the City of Pineville suggested that it is not clear who has to sign the form.

RESPONSE: Section 479.359.3(4), RSMo, and the proposed rule provide that any representative of the county, city, town, or village with knowledge of the subject matter may sign. Because of differences between local government structures, an all-inclusive list of potential representatives with knowledge cannot be provided. No changes will be made as a result of this comment.

(3) The addendum form shall be submitted within six (6) months after the end of the county, city, town, or village's fiscal year and shall be filed with any required annual financial report filed under the procedures in 15 CSR 40-3.030.

(6) If the county, city, town, or village's fiscal year ended before August 28, 2015, the county, city, town, or village may report the information required by subsection (1) of this regulation in a form that substantially comports with the requirements of this regulation and may report its total revenue for municipal court violations or provide an accounting of the percent of annual general operating revenue from fines and court costs from traffic violations, including amended charges from any charged traffic violation based on section 302.341, RSMo (Supp. 2014).

(7) Examples.

(A) A city with a municipal court has several ordinances related to equipment failure, vehicle registration, and seatbelt use for which the no points are placed on the driver license upon conviction. The funds received from these violations should be included in "minor traffic violations" when reporting the information under subsection (1) of this regulation because the statutory definition of "minor traffic violation" includes municipal or county ordinance traffic violations, except those that involve authorization for the Department of Revenue to assess five or more points to a person's driving record upon conviction, assuming that the specific violation does not fall within one of the other statutorily enumerated exceptions in the definition of "minor traffic violation."

(B) The municipal court amends a violation that does not meet the definition of "minor traffic violation" to a violation that does meet this definition. The funds received from these violations should be included in "minor traffic violations" when reporting the information under subsection (1) of this regulation because the calculation includes charges for all minor traffic violations.

(C) The municipal court amends a violation that meets the definition of "minor traffic violation" to a violation that does not meet this definition. The funds received from these violations should be included in "minor traffic violations" when reporting the information under subsection (1) of this regulation because the original charge is a minor traffic violation.

Form here